

CONDUIT SYSTEM LICENSE AGREEMENT

This Conduit System Lease Agreement (hereinafter "Agreement") is made and entered into by and between the City of Lincoln, Nebraska, a municipal corporation, 555 S. 10th Street, Lincoln NE 68508 (hereinafter referred to as "City"), and the Board of Regents of the University of Nebraska, a public body corporate and governing body of the University of Nebraska – Lincoln, 3835 Holdrege Street, Lincoln, NE 68583 (hereinafter referred to as "Licensee"), as of the Effective Date (as hereinafter defined).

WHEREAS, City owns a system of conduit, innerduct, manholes and hand holes (hereinafter "Conduit System"), as generally depicted in Exhibit B, within and under certain public street, sidewalk and alley rights-of-way in the Lincoln Technology Improvement District ("LTID") as depicted on the map attached hereto as Exhibit B and as described in Exhibit C attached hereto, and it is the intent of the City to provide the Conduit System specifically for the use of telecommunication providers, and expressly for the purpose of providing fiber optic based broadband connectivity within the LTID; and,

WHEREAS, the Conduit System is intended (i) to limit the number of utility street cuts by co-location of fiber optic facilities within the City's rights-of-way located in the area that comprises the LTID (these rights-of-way located within the LTID being collectively referred to in this Agreement as the "ROW") and (ii) to increase the availability of fiber optic based broadband to broadband users located within the LTID, including but not limited to those users that are currently underserved, in part, due to the limited space available for conduit placement within the ROW; and

WHEREAS, Licensee owns and/or operates, within the City of Lincoln certain telecommunications facilities not subject to this Agreement, portions of which are located within the LTID, the extent of which may change over time ("Licensee Network"); and

WHEREAS, Licensee desires to install, use and maintain fiber optic telecommunication cables and appurtenances ("Licensee Fiber Optics") in the Conduit System, all at the sole cost and expense of the Licensee; and

WHEREAS, Licensee desires to utilize the Conduit System for the provision of non-profit telecommunication services to Licensee only, in a non-competitive manner.

WHEREAS, the Licensee has agreed to be bound by the terms and conditions set forth herein which shall govern the Licensee's existing and future use the Conduit System;

NOW, THEREFORE, in consideration of the foregoing and the following covenants and agreements, it is hereby agreed by and between City and Licensee (hereinafter "Parties") as follows:

1. USE OF CONDUIT SYSTEM. City hereby licenses space in the Conduit System (hereinafter "Space") to Licensee on a non-exclusive basis, for Licensee to install, use and maintain Licensee Fiber Optics, in a single innerduct as assigned by City, in limited segments of the Conduit System, where space is available, and where approved by City, at City's sole discretion as set forth below, anywhere within LTID. The Space provided to Licensee for each installation may be shared with other fibers and shall be sufficient for the installation of a single fiber-optic cable with an outside diameter equal to or less than one-half inch (< .51"). As used in this Agreement, the boundaries of the LTID are as defined in Exhibit C. Prior to any installation by Licensee of Licensee Fiber Optics within the Conduit System, Licensee shall submit a permit application (pursuant to the City's then-current permitting system) in accordance with section 12c of this agreement, including a depiction of the proposed installation, to the City for review and approval (the "Permit Application"). The City shall respond in writing to Licensee's Permit Application within fifteen (15) business days after submission to the City by issuing a permit or providing comments for revision of

the Permit Application. Upon receipt of the permit, Licensee may begin installation of the approved Licensee Fiber Optics ("Installation") and the terms of the approved Installation shall be incorporated in this Agreement as an addendum (each an "Installation Addendum").

2. TERM.

(a) Term. The term of this Agreement shall begin on the Effective Date, and shall end on the date that is twenty-five (25) years from the Effective Date, unless earlier terminated as provided herein ("Term").

(b) Renewal Term. The Parties agree to negotiate in good faith terms acceptable to both Parties for the renewal of this Agreement. Nothing in this Agreement is intended to or does create a legally binding obligation on either Party to renew this Agreement or to reach definitive renewal terms. Each Party acknowledges that if negotiations do not result in definitive renewal terms, then no renewal term is granted and neither Party is entitled to any compensation from the other Party for any reason connected with the negotiations or their termination.

3. CONSIDERATION.

(a) Location. During the Term of this Agreement, Licensee agrees to, at Licensee's sole cost and expense, respond to requests for location of Licensee Fiber Optics through the Nebraska One-Call System associated with any part of the System where the Licensee has existing and new constructed Facilities located in the Conduit System.

(b) Damage Due to Failure to Locate. In the event Licensee fails to locate Licensee Fiber Optics or fails to locate such Licensee Fiber Optics correctly, Licensee, to the extent allowed by law, shall be liable for any and all costs and expenses arising directly and solely out of Licensee's failure to locate.

(c) FIBER IRU.

- (i) City IRU. In consideration for the agreement to use the Conduit System granted herein, the Licensee grants the City an indefeasible exclusive right to use four (4) fibers within the Licensee Fiber Optics (the "Licensee Fibers") for a term not less than twenty-five (25) years from the execution date of this agreement. The exclusive, indefeasible right to use the Licensee Fibers may be referred to herein as the "City IRU." The specific number of Licensee Fibers the City is allowed to use as part of the City IRU at each location where a portion of the private network has been installed is depicted on the drawing attached hereto which is marked as Exhibit "D" and incorporated herein by reference, which Exhibit shall be updated as necessary. The City may request to share an additional eight (8) Licensee Fibers per cable (the "City IRU Fibers") for a term not less than twenty-five (25) years from the execution date of this agreement.

City shall be permitted to connect the City IRU Fibers to, and use the fiber for use and benefit of, City and all of City's elected bodies, departments, joint departments with the County and affiliated entities which are established or created in whole or in part by City Charter, Ordinance or Resolution or interlocal agreement and which perform, in whole or in part, authorized functions of City government in either its proprietary or governmental capacities.

Licensee agrees to deliver to the City the City IRU Fibers within fifteen (15) business days after Licensee receives the City's written request for access to the City IRU Fibers on a particular cable.

4. STANDARDS AND SPECIFICATIONS. Licensee shall design, construct, install, secure, use, operate and maintain the Licensee Fiber Optics according to the Technical Standards and Specification ("TSS") set forth in Exhibit A hereto, unless a change to the TSS is approved by the City in accordance with the terms thereof.

5. OTHER USE. This Agreement shall be subject to and subordinate to City's right to maintain and use the Conduit System, and to use, alter or excavate any portion of the ROW or utilities; provided, however, that the City shall use commercially reasonable efforts to minimize any adverse impact on Licensee's rights under this Agreement. In the event that the City desires to make planned changes to the Conduit System, the City shall provide Licensee not less than ninety (90) days prior written notice setting forth a description of any changes in the Conduit System that could reasonably result in a material diminution or reduction of Licensee's rights under this Agreement. Upon receipt of such notice as described above, Licensee shall have the right to terminate any affected Installation Addendum of this Agreement without further liability.

6. CITY'S TITLE. City is the owner and/or holder of the property comprising the ROW associated with the Conduit System and shall be the owner of the Conduit System, subject in each case to the terms and limitations under which they are owned or held, including but not limited to covenants, conditions, restrictions, easements, including pre-existing fiber optic easements or licenses, reversionary interests, bond mortgages and indentures, and other matters, including but not limited to encroachments, licenses and permits, whether or not of record, and to the rights of tenants and licensees in possession. The rights granted herein are subject to each and every limitation, restriction or reservation affecting the same; provided however, that City shall use commercially reasonable efforts to acquire and maintain the rights necessary to provide the Space leased hereunder in accordance with the terms of this Agreement and City shall have the right to terminate any affected portions of any Installation Addendum of this Agreement without further liability in the event that any limitation, restriction or reservation in such rights has a material adverse impact on Licensee's ability to use the Space leased hereunder.

7. RESTRICTION. Licensee shall not (a) create, or permit any lien, encumbrance or other property interest in the Conduit System, or (b) subject to the provisions of section 23 below, directly or indirectly sell or otherwise transfer any interest hereunder to any person or entity without the prior approval of City, which approval may be denied for reasonable cause shown. Licensee shall not sub-lease its Space in the Conduit System to any third party. Licensee may not sell or lease or make-use agreement for or of "dark fiber", capacity or bandwidth on IRU fibers to third parties or resell or otherwise assign its rights and privileges contained in this Agreement to any third parties.

8. ACCEPTANCE.

(a.) Licensee built Assets. Assets constructed or installed, and work performed related to the construction of said Assets within the ROW and attached to the Conduit System, by Licensee in compliance with the TSS shall be considered acceptable to the City. Acceptance shall not be unreasonably withheld or delayed by the City. Assets not accepted shall be brought into compliance with the TSS by Licensee. If physical conditions in the ROW prevent Licensee from satisfying the TSS, the Licensee and City shall work together to reach a solution mutually agreeable to both Parties.

9. OWNERSHIP. The Conduit System shall at all times be and remain the property of City. Main Line Extensions, Building Extensions, innerduct, manholes and/or hand holes (collectively "Assets") constructed or installed by Licensee within the ROW, shall become property of the City immediately upon acceptance. The Fiber Optics shall at all times be and remain the property of Licensee. Licensee shall install and maintain the Licensee Fiber Optics at Licensee's own expense and risk.

10. INTENDED USE. City certifies the continuity and integrity of the Conduit System, that it is acceptable for its intended use, and that the Space assigned to Licensee is available on a where-is and as-is and as-available basis. Any deficiency in the segment of the Conduit System where the Licensee has, either existing Fiber Optics or desires to install Fiber Optics shall be brought into compliance with the TSS at the sole cost of the Licensee, prior to installing or changing existing installation of Licensee Fiber Optics.

11. OBLIGATIONS.

(a.) Licensee Obligations.

(i.) During the Term of this Agreement, Licensee shall maintain the Licensee Fiber Optics in a functional and safe condition. All installation and maintenance of the Licensee Fiber Optics shall be the responsibility of Licensee and shall be performed under its direction by contractors approved by City, such approval not to be unreasonably withheld. Licensee shall perform such maintenance as is reasonably necessary and customary for normal use of the Licensee Fiber Optics in the manner described in Exhibit A. The installation and maintenance of the Licensee Fiber Optics shall be performed in a manner that minimizes any interruption or disruption of the ROW, utilities, communications or streets (including traffic control devices and systems) and shall restore the ROW, utilities, communications and streets (including traffic control devices and systems) in accordance with Exhibit "A". The Licensee shall follow reasonable guidance and instructions from City for this purpose which need not be the lowest cost or most cost effective method for Licensee.

(ii.) If, in the course of Licensee's monitoring and maintenance of the Licensee Fiber Optics, Licensee identifies any degradation in service, failures or defects in the Conduit System, Licensee shall promptly report such degradation in service, failures or defects to the City.

(iii.) In accordance with the Lincoln Revised Ordinances, Licensee shall be responsible for all damage, loss, and expense which may result by reason of defective material and/or workmanship in connection with work performed by Licensee under this Agreement, arising within a period of one (1) year from acceptance of said work by the City pursuant to Section 8(b) above. Licensee shall promptly repair such defect and pay, or cause to be paid, all expenses associated with said repair; and Licensee shall save and hold the City harmless from all damages, loss, and expense occasioned by or resulting from such defect.

(iv.) Licensee shall splice and maintain the City IRU Fibers so as to assure continuing conformity with City specifications, including, without limitation, conducting surveillance of such facilities, location of faults, splicing and splice testing associated with any restoration, and procurement of replacement cable used in restoration. Splice configuration shall be provided to Licensee by City and paid for by Licensee. The costs to Licensee for splicing, splice testing and splice configuration for the City IRU Fibers shall not exceed \$8,000.00 per calendar year.

(v.) Licensee shall be responsible for all One Call locates of their fiber whether in City conduits or in its own Private Network.

(vi.) Licensee shall relocate or remove their facilities in accordance with Lincoln Municipal Code section 5.17.160.

(b) City Obligations.

(i.) Ongoing maintenance and repair of the Conduit System shall be the responsibility of the City; except that damage or degradation of the Conduit System that is attributable to negligence of the Licensee, and segments of the Conduit System occupied by Licensee Fibers shall be at the expense of the Licensee. The City shall maintain the Conduit System in good working condition, ensuring continuity between manholes, hand holes and Building Entrance points, and usable for its intended purpose.

(ii.) The City retains the following rights in regard to this agreement:

To terminate this agreement for misuse, non-use or failure of Licensee to comply with the provisions hereof (each an "Event of Default"); provided, however, the City shall provide written notice of any alleged Event of Default and the Licensee shall have thirty (30) days after receipt of such written notice from the City to cure the alleged Event of Default provided, in the event the nature of the default is such that it is not capable of being cured within 30 days, then the parties may mutually agree upon an additional reasonable period in which to complete such cure.

To use, control and regulate the use of the City streets, roads, easements, other public places and the Rights of Way, and the space above and beneath the same; and the Conduit System; and

To require the removal or relocation of any of the Facilities from the Conduit System if necessary or desirable, in the sole judgment of the City, for any public or municipal purpose or project, at the Licensees' sole cost and expense Licensee may abandon any segment where a removal or relocation is required pursuant to the procedure in LMC 5.17.

Licensee or the City may, upon one year prior written notice, elect to surrender and Terminate this agreement and all rights thereunder. Upon the effective date of termination, the Term of this Agreement shall end, the Licensee's rights to use of public rights of way shall cease, and City's right to use IRU Fibers shall terminate.

12. LICENSEE USE OF CONDUIT SYSTEM.

(a) Third Party Contracts. Licensee shall not act in any way which would materially and adversely interfere with City's performance of City contracts for provision of communication services or leasing space within the Conduit System

(b) Damage from Misuse. Licensee shall not use the Conduit System except as intended under this Agreement. If Conduit System damage is attributable to misuse or abuse by Licensee, then Licensee shall pay City for the repair or replacement of the affected portion of Conduit System and any damage to City property in accordance with City schedule of time and material charges then in effect.

(c) Use in Accordance with Law. By agreeing to this Agreement, Licensee agrees to obey and comply with all applicable governmental ordinances, laws, rules, regulations, or restrictions, including, but not limited to, the City of Lincoln Title 5 and Title 14. Subject to City ordinance, City permitting requirements, and Exhibit A.

13. INDEMNIFICATION. To the extent allowed by law, Licensee shall indemnify and hold City harmless from any and all damages, losses, claims, suits, actions or judgments, including all expenses, reasonable attorney fees, witness fees and costs of defending or prosecuting any such claim, or appeals therefrom, relating to personal injury (including death) and damage to tangible personal property to the extent arising from Licensee's negligent or willful acts or omissions in connection with the performance of this Agreement (including Exhibit A) or Licensee's negligent or willful acts or omissions in connection with the installation, use or maintenance of the Licensee Fiber Optics or the Conduit System, including any interference or damage to any third person or property. Licensee agrees to investigate (and at City's election, defend with counsel approved by City), indemnify, and hold harmless City from and against any and all loss, damage, liability, claims, demands, detriments, costs, charges and expenses (including, without limitation, attorney's fees) and causes of action of whatsoever character which City may be subjected to on account of loss of or damage to or destruction of property, including but not limited to the Conduit System, and loss of use thereof to the extent arising from Licensee's, its agents' or contractors' negligent or willful acts or omissions in connection with the performance of this Agreement (including Exhibit A) or Licensee's, its agents' or contractors' negligent or willful acts or omissions in connection with the installation, use or maintenance of the Licensee Fiber Optics or the Conduit System.

To the extent allowed by law, the City shall indemnify and hold Licensee harmless from any and all damages, losses, claims, suits, actions or judgments, including all expenses, reasonable attorney fees, witness fees and costs of defending or prosecuting any such claim, or appeals therefrom, relating to personal injury (including death) and damage to tangible personal property to the extent arising from the City's negligent or willful acts or omissions in connection with the performance of this Agreement (including Exhibit A) or the City's negligent or willful acts or omissions in connection with the installation, use or maintenance of the Licensee Fiber Optics or the Conduit System, including any interference or damage to any third person or property. The City agrees to investigate (and at Licensee's election, defend with counsel approved by Licensee), indemnify, and hold harmless Licensee from and against any and all loss, damage, liability, claims, demands, detriments, costs, charges and expenses (including, without limitation, attorney's fees) and causes of action of whatsoever character which Licensee may be subjected to on account of loss of or damage to or destruction of property, including but not limited to the Conduit System and the Licensee Fiber Optics, and loss of use thereof to the extent arising from the City's, its agents' or contractors' negligent or willful acts or omissions in connection with the performance of this Agreement (including Exhibit A) or the City's, its agents' or contractors' negligent or willful acts or omissions in connection with the installation, use or maintenance of the Licensee Fiber Optics or the Conduit System.

14. INSURANCE. Licensee agrees to maintain, during the term of this Agreement, policies of insurance in accordance with the City of Lincoln Revised Ordinances. The City acknowledges and agrees that Licensee may self-insure.

15. TERMINATION.

(a) By Licensee. Licensee may terminate this Agreement for any reason or no reason, upon ninety (90) days written notice to City. Upon termination of this Agreement as herein provided, at its sole cost and expense, Licensee shall, upon written demand from City, and within ninety (90) days after receipt of such demand, completely remove all of the Licensee Fiber Optics and restore the Conduit System and any other facilities, cables, public property, as nearly as possible, to the state and condition of its existence immediately prior to commencement of this Agreement with all cost borne by the Licensee. Failure to remove the Licensee Fiber Optics within the required timeframe shall constitute abandonment and title thereto shall pass to the City. If the City does not demand removal, Licensee may, at its option, completely

remove all the Licensee Fiber Optics or abandon said Licensee Fiber Optics to City ownership without cost or expense to the City.

16. VIOLETIONS; TIME TO CURE; SUMMARY TERMINATION. If at any time in the performance of this Agreement, Licensee should violate any law(s), standard(s) of good practice, or material term of this Agreement, including Exhibit A, City may notify Licensee in writing of said violation, and Licensee shall have thirty (30) days to cure said violation to City's satisfaction, or such longer period as may be reasonably necessary under the circumstances provided that Licensee commences to cure such failure within such thirty (30) day period and thereafter diligently pursues such cure. If Licensee does not cure said violation to City's satisfaction within said period, City may summarily terminate this Agreement, upon ninety (90) day advance written notice to Licensee.

(a) Dispute Resolution. The Parties will attempt in good faith to resolve any dispute or claim arising out of or in relation to this Agreement through negotiations between the Conduit System Manager, City and the Licensee. If the dispute cannot be settled amicably within thirty (30) days from the date on which either Party has served written notice on the other of the dispute then the remaining provisions of this Clause shall apply. The written dispute notice should be filed with the City Clerk.

(b) Escalation of Dispute Resolution. In the event of a dispute between the Conduit System Manager and the Licensee (other than a matter to be resolved pursuant to Clause concerning the interpretation of any provision of this Agreement or the performance of any of the terms of this Agreement) is not resolved, such matter or matters in dispute shall be escalated as follows:

(i.) Licensee may submit a written request to the Public Works Director requesting a meeting to discuss the matter. The Public Works Director will meet with Licensee and issue a written response to the issue within fifteen (15) days of the meeting;

In the event the Licensee does not agree with the findings of the Public Works Director, the Licensee may submit a written request the Office of the Mayor for a review of the issue in dispute. The Office of the Mayor will review the findings of the Conduit System Manager and the Public Works Director and issue a written response to the Licensee within thirty (30) days of receipt of the written request; and

(ii.) In the event the Licensee does not agree with the findings of the Office of the Mayor, the Licensee may proceed to pursue any remedies available to Licensee at law or in equity, including filing litigation before the District Court of Lancaster County, Nebraska seeking to obtain a resolution of any remaining open issues.

17. NOTICES. City and Licensee agree to keep contact information complete and updated. Except as otherwise provided in this Agreement, any notice or other communication shall be given in writing and sent by registered or certified mail, postage prepaid, return receipt requested or by recognized overnight delivery, or by email provided the email is followed in writing by one of the aforementioned methods within seventy-two (72) hours. Except as otherwise specifically provided, notices and other communications shall be deemed given and received three days after the date of mailing or, in the case of notices or other communications delivered in person, when received at the recipient's designated address for notices. The addresses for notice may be changed by giving written notice in accordance with this Section.

(a) City. City's representative for notice and communications with Licensee is:

City of Lincoln
Attn: Mayor's Office

555 S. 10th Street,
Lincoln NE 68508

- (b) Licensee. Licensee's representative for notice and communications with City is:

University of Nebraska-Lincoln
Real Estate Properties
1901 "Y" Street
Lincoln, NE 68588

With a copy to:

University of Nebraska
General Counsel's Office
3835 Holdrege Street
Lincoln, NE 68583-0745

18. BINDING UPON SUCCESSORS. This Agreement, shall bind both Parties hereto, and their successors and permitted assigns.

19. ANNUAL PERFORMANCE REVIEW. Representatives of City and representatives of Licensee shall meet together on or about each anniversary of the execution of this Agreement, to review the performance of this Agreement, identify problems, discuss areas of concern, and make suggestions for future performance and cooperation. By mutual agreement, the Parties may waive the said meeting.

20. MISCELLANEOUS.

(a) Headings. The front page of this Agreement and the heading of the paragraphs of this Agreement are strictly for convenience and shall not in any way be construed as amplifying or limiting any of the content of this Agreement as set forth in the body of such paragraphs.

(b) Entire Agreement. This Agreement, with all its attached exhibits, constitutes the entire agreement between the Parties with respect to the subject matter to which it refers and supersedes all previous agreements, whether written or oral, between City and Licensee or their predecessors in these regards. Nothing herein is intended to benefit any person or entity not a party hereto.

(c) Counterparts. This Agreement may be executed by the Parties in two (2) separate counterparts, each of which shall be deemed to be an original copy, but which shall constitute but one agreement.

(d) Computation of Time. The time in which any act provided by this Agreement is to be done shall be computed by excluding the first day and including the last, unless the last day is a Saturday, Sunday or holiday, and then it is also excluded.

(e) No Partnership, Joint Venture or Franchise. The relationship between the Parties to this Agreement shall not be that of partners, joint ventures, or franchisor/franchisee, and nothing contained in this Agreement shall be deemed to constitute a partnership, joint venture or franchise. Neither Party hereto may represent to any third party that this relationship is one of partnership, joint venture or franchise.

(f) Rules of Construction. The headings of the Sections in this Agreement are strictly for convenience and shall not in any way be construed as amplifying or limiting any of the content of this Agreement as set forth in the body of such Sections. The singular herein shall include the plural, and the

plural herein shall include the singular, where appropriate. Related forms of capitalized terms shall carry the implied meaning of the defined term.

(g) Force Majeure. Neither Party shall be in breach of its obligations under this Agreement (other than payment obligations) or incur any liability to the other Party for any losses or damages of any nature whatsoever incurred or suffered by that other if and to the extent that it is prevented from carrying out those obligations by, or such losses or damages are caused by, a Force Majeure Event.

"Force Majeure Event" means the occurrence of: an act of war, invasion, terrorism or civil disorder, a strike, labor disputes, explosion, embargo, earthquake, lightning, cyclones, hurricanes, floods, droughts or such other extreme weather or environmental conditions, unanticipated geological or ground conditions, epidemic, famine, plague or other natural calamities and acts of God.

(h) No Waiver. Licensee, by entering into this Agreement, does not waive, and hereby expressly reserves its rights pursuant to 47 U.S.C. §224, Neb. Rev. Stat. §§86-710 or other laws or regulations that grant Licensee rights to place equipment or facilities in the City's right of way.

21. EFFECTIVE DATE. The Effective Date of this Agreement shall be the later of the date on which it is executed by the City or Licensee.

22. ASSIGNMENT. Neither Party shall assign, encumber or otherwise transfer this Agreement to any other Person without the prior written consent of the other Party, which consent shall not be unreasonably withheld. Notwithstanding the foregoing, each Party shall have the right, without the other Party's consent, but with prior written notice to the other Party, to assign or otherwise transfer this Agreement (i) as collateral to any institutional lender of such Party subject to the prior rights and obligations of the Parties hereunder; and (ii) to any affiliate, parent or subsidiary of such Party, or to any entity into which such Party may be merged or consolidated or which purchases all or substantially all of the equity or assets of such Party; provided that such Party shall not be released from its obligations hereunder. Any assignee or transferee shall also be subject to all of the provisions of this Agreement.

23. LIMIT OF OBLIGATIONS. Nothing contained herein pertaining to the use of or attachment to the Conduit System, or City control thereof, shall be construed as imposing an obligation on Licensee with regard to any fiber optic or other telecommunication facilities owned and/or operated by Licensee outside the ROW unless specifically noted in this Agreement and approved by Conduit System Manager, it being understood that "ROW" under this Agreement strictly refers to City rights-of-way located within the LTID as defined in Exhibit C. Similarly, no such obligations shall be imposed on Licensee's equipment or facilities, existing or in the future, not specifically constructed or installed under this Agreement.

24. LIMITS OF LIABILITY. Except as provided in this Agreement or otherwise agreed in writing, the City and Licensee shall not be subject to any other obligation or liability, whether arising out of breach of contract, warranty, tort or other theories of law, with respect to the subject matter of this Agreement, or the undertakings, acts or omissions related thereto.

Under no circumstances will either City or Licensee be liable for any incidental or consequential damages, arising in connection with this Agreement or with the use of the Conduit System or liability for the City's services under this Agreement.

IN WITNESS WHEREOF, the Parties hereto have executed this Agreement on the dates set forth below.

**CITY OF LINCOLN, NEBRASKA,
a municipal corporation**

Chris Beutler, Mayor

Public Works Director

Date: _____

Date: _____

ATTEST:

APPROVED:

City Clerk



City Attorney

LICENSEE:

By:



Name: **Christine A. Jackson** _____

Title: **Vice Chancellor, Business and Finance** _____

Date: 6/3/13 _____

Exhibit A

Technical Standards and Specifications

These standards and specifications pertain only to use of the Conduit System as relates to this Agreement. The Conduit System is located within the Lincoln Technology Improvement District as shown in Exhibit B and generally described in Exhibit C of this Agreement.

I. DEFINITIONS

- A. “Main Line” means the portion of the Conduit System consisting of manholes, hand holes, 4”, 3” and 2” conduit, the running line of which is as generally depicted in Exhibit B, and segments of which may be populated existing copper traffic operations wire.
- B. “Main Line Extension” means any extension of the Main Line subsequent to the Effective Date, whether constructed by the City or by any tenant in the Conduit System, including Licensee.
- C. “Non-Typical Conduit” means any existing 2” or 3” traffic conduit located within the Lincoln Technology Improvement District.
- D. “Building Extension” means that portion of the Conduit System, located within the ROW, originating at a manhole or hand hole in the Main Line and extending to a building entrance point, excluding the building entrance point.

II. CONSTRUCTION STANDARDS

A. Materials

- i. **Main Line Extensions.** All Steel, Fiberglass, PVC or HDPE conduit installed with the intent of becoming a Main Line Extension are to be 4” minimum in size and match the existing number of conduits in place. Steel conduit will be joined with threaded collars, Zap-Lok, or welding. All split steel conduit shall be flanged. All 4” conduits will be installed in such a manner as to allow for the installation of four (4) innerducts, three (3) innerducts will be 1 ¼” SDR 13.5 HDPE innerduct and one (1) 1” SDR 13.5 HDPE innerduct. All directional changes will be made with sweep 90 degree elbows and at no time will the conduit installations restrict the number of innerducts able to be installed to less than four (4). All Main Line Extension conduit locations and materials will be subject to approval by Conduit System Manager. Where site conditions warrant and at the request of the Licensee, the Conduit System Manager may approve the installation of six (6) 1 ¼” SDR 11 innerducts as a mainline extension.
- ii. **Building Extensions.** All Building Extensions are to consist of three (3) 1 ¼” SDR 13.5 ducts and one (1) 1” SDR 13.5 innerduct, which may be installed within 4” HDPE conduit, or an equal alternate approved by Conduit System Manager. Where site conditions warrant and at the request of the Licensee, the Conduit System Manager may approve the installation of a six (6) cell MaxCell sock inside a building entry conduit.
- iii. **Non-Typical Conduit.** All non-typical conduit is provided where is and as is under this agreement. The use of non-typical conduit is provided to the Licensee on an as-request basis and subject to the approval of the Conduit System Manager. Non-typical conduit sizes are typically 2” or 3” in diameter. Licensee will take precautions to avoid damaging any existing City-owned cable while installing Licensee facilities in the non-typical conduit. Licensee agrees to cooperate with the City in the removal and replacement of the existing cable in return for the use of the Non-Typical Conduit. MaxCell innerduct with a minimum capacity for four (4) cables will be installed in any Non-Typical Conduit prior to installing any Licensee facilities.
- iii. **Main Line Innerduct.** Any unoccupied 4” Main Line conduit in which Space is assigned to

Licensee and which Licensee desires to utilize shall be first filled with a minimum of four (4) innerducts, three (3) innerducts will be 1 ¼" SDR 13.5 HDPE innerduct and one (1) 1" SDR 13.5 HDPE innerduct by Licensee prior to use. The use of smooth wall or corrugated exterior innerducts will be approved by Conduit System Manager on a case by case basis. Alternates must be approved in writing by the City in advance. Licensee will properly identify leased innerducts with cable tags.

- iv. **Hand holes.** Unless otherwise approved by City, all hand holes will be located in the green spaces/landscaped areas or sidewalks within the Lincoln Technology Improvement District. All hand holes will have a minimum size of 30" x 48" x 36". All hand holes will be installed in accordance with ASSHTO-H20-44 Load rating and conform to the City of Lincoln Traffic Standards and Specifications.
- v. **Manholes.** All manholes installed within the Lincoln Technology Improvement District shall comply with the City of Lincoln Construction Standard Specifications and Standard. No manholes constructed with masonry brick will be permitted within the Lincoln Technology Improvement District.
- vi. **Communication Cabling.** It is the intent of the City to increase the use of fiber optic based telecommunications within the Lincoln Technology Improvement District. Therefore, the desired communication cable to be used within the Conduit System will be fiber optic cable. An equitable alternate may be approved upon written request to the City. Licensee Fiber optic cable located in the Conduit System will not exceed an outside diameter of less than one-half inch (< than.51") unless explicitly agreed to in writing by the City.
- vii. **Locate Wire.** Locate wire will be placed inside all segments of the Conduit system. Locate wire will consist of a minimum of #6 solid core PVC coated copper wire. An equitable alternate may be approved upon written request to the City. All locate wires will be attached with anchor clips to the walls of the Manholes in a clean, secure and orderly manner. Locate wires will connected to termination blocks installed by the contractor no more than 10" below the Manhole or hand hole lid.

B. General:

- i. **Construction Plans.** Preliminary plans shall be submitted for each new construction or installation project at the time of application for a Conduit Access Permit. After completion of construction on each project, final as-built construction and acquisition Facility maps shall be submitted to the Conduit System Manager. Such as-built maps shall be based upon post-construction inspections to verify location. Copies of as-built maps in a digital format acceptable to the City shall be submitted to the Conduit System Manager.
- ii. **Depth.** Unless agreed to in writing in advance by the City, the depth of installed facilities shall be, at a minimum, as follows:
 - a. Forty-eight (48) inches in soil,
 - b. Forty-eight (48) inches below a projected slope from the flow line of a ditch at a three (3) horizontal and one (1) vertical slope,
 - c. Forty-eight (48) inches under a roadway measured from the surface of said roadway to the top of the installation,
 - d. Forty-eight (48) inches under a storm water or creek channel design flow line, and
 - e. Cross under all existing utility lines at a depth of twenty-four (24) inches.

iii. Lincoln Technology Improvement District Specific Locations

- a. Street – All conduits placed at a minimum 4’ depth unless otherwise approved by Conduit System Manager
 - b. Alley – All conduits placed at a minimum 4’ depth unless otherwise approved by Conduit System Manager
 - c. Sidewalk – All conduits placed at a minimum 4’ depth unless otherwise approved by Conduit System Manager
 - a. Aerial – No aerial installations will be permitted unless on an existing pole and approved by the Conduit System Manager. Any relocation of facilities from an aerial installation to underground will be at the sole discretion of the City and at the sole cost of the Licensee.
- iv. Backfilling/Testing.** Excavations shall be promptly backfilled according to the City of Lincoln Standard Specifications for Municipal Construction on file with the Public Works Director and the surface shall be restored to original grade to assure no hazard to vehicular, animal, or pedestrian traffic. Licensee shall perform all necessary compaction tests in accordance with the latest design and construction specifications approved and disseminated by the Director of Public Works setting forth requirements for backfill and paving cut repairs (e.g., standard concrete pavement cut and repair; standard asphalt pavement cut and repair, etc.). All test reports shall be submitted to the Conduit System Manager.
- v. Pavement Cutting.** Licensee, Licensees’ contractors and subcontractors shall comply with the applicable terms and conditions of the Lincoln Municipal Code prior to cutting any pavement.
- vi. Replacement.** The replacement of any sidewalk, curb, any driving surface and the base of any roadway shall comply with Public Works Engineering Standards, pursuant to engineering standards on file with the Public Works Department and will require additional removal to the nearest joint in all directions. This removal and all pavement restoration cost shall be the responsibility of the Licensee. Licensee repair contractor may be approved by the Conduit System Manager provided contractor is qualified and in good standing with the City with all work done at the expense of the Licensee as set forth in title 14 and Lincoln Revised Ordinances. The Licensee may request the City perform the replacement work with City internal staff and bill Licensee for the work. In the absence of an approved repair contractor, The City shall make repairs per the terms of the Lincoln Municipal Code.
- vii. Trenching.** Licensee shall not proceed with additional trench work exceeding a maximum of one hundred (100) feet of open trench without the approval of the Conduit System Manager. All excavation spoils and/or construction debris will be removed immediately.
- viii. Crossings.** All underground crossings of paved roadways and storm water and creek channels shall be made by a bore method approved by the Conduit System Manager. Any alternate method shall be reviewed and subject to approval by the Conduit System Manager. Voids and all holes shall be properly grouted. Crossings shall be at approximately right angles to the roadway and in no case shall any facility be placed in any culvert or drainage pipe or within ten (10) feet of a culvert or storm sewer unless approved by Conduit System Manager.
- ix. Boring Specifications :**
 - a. Casing pipe or Conduit shall be placed as indicated on the drawings and shall be as specified in the section entitled “Materials.”
 - b. Casing pipe or Conduit shall be placed to the minimum depths indicated on the drawings. The horizontal tolerance shall be plus or minus 0.5 foot and the vertical

alignment plus or minus 0.5 foot.

- c. The method of placement when indicated on the drawings as Boring shall mean that the casing or Conduit is placed between two points (either at grade or from an excavated bore pit) without disturbing the ground in between. Unless otherwise required by permit, all bores shall be guided and tracked by equipment that gives continuous, accurate monitoring of the drill bit position. All guidance equipment shall be subject to the acceptance of the engineer. Auger bores are acceptable when required by permit entities. This could possibly apply to RR crossings.
 - d. Bore methods and procedures shall follow industry established best practices.
 - e. No non-guided boring (such as what has been referred to as “missile” or “thumper”) shall be permitted.
 - f. The contractor is responsible to protect all existing utilities and private property. Existing utilities shall be potholed prior to boring. Drill fluid shall be bentonite based compatible with the environment. Waste oil or environmentally non-compatible polymers cannot be part of the composition.
 - g. Used drilling fluid shall be properly, immediately and legally, disposed of.
 - h. The contractor shall continuously monitor boring operations for the possible frac-out of drill fluid. Any frac-out or surface uplifting shall be immediately reported to the engineer, contained, repaired and cleaned up. Any drill fluid released into waterways shall be immediately reported to the Conduit System Manager, contractor and permit agency governing the water. In water, the frac-out shall be contained, in accordance with the permit. Clean up shall be in accordance with the permits. Drill fluid shall not be allowed to remain in the water.
 - i. The contractor shall be responsible for dewatering, diverting water, and controlling water surface runoff that would affect downstream water turbidity as required for the site conditions.
 - j. At bore locations with lengths in excess of 600 feet as indicated on the drawings, the contractor may be allowed to establish intermediate bore pits. The Conduit System Manager shall make the determination on the acceptability of intermediate bore pits.
 - k. Where pipe bends are required to be made in the field, such bends shall be made with approved bending tools, and following the pipe manufacture’s approved method of procedure.
- x. **Erosion.** Erosion prevention measures shall be incorporated into all work within the ROW as described in the Storm Water Management Manual. All gutters, ditches, and other drainage features shall be maintained free and unobstructed of sediment, dirt, and debris. The handling, grading, excavating, or moving of excess construction materials or the movement or cleaning of construction vehicles or equipment shall be conducted in such a manner that materials and washout will not be deposited into catch basins, gutters, ditches, or areas where runoff may carry materials into any public or private storm water system.
- xi. **Inspection.** All construction inspection shall be coordinated with the Conduit System Manager.
- xii. **Nebraska One Call System.** Licensee and any contractor or subcontractor working on behalf of the Licensee agree to comply with the State’s One Call notification/location system, known currently as the Nebraska One Call System. Licensee will be responsible for all locates of existing and post-acceptance newly constructed Conduit System occupied by Licensee. Licensee shall be responsible for locating Licensee Fiber Optics as provided for under the Nebraska Underground Facilities Damage Prevention Act.
- xiii. **Damages.** Licensee agrees to perform construction in such a manner as to avoid possible

damage to the Conduit System. Should Licensee become aware of damage to the Conduit System or the facilities of its tenants, Licensee agrees to notify the City of damages. If damage is attributable to Licensee negligence, Licensee agrees to bear full responsibility for all cost associated with the repair and restoration of the affected area. Licensee and the Conduit System Manager shall cooperate to determine the best means of restoration. The contractor performing repairs shall be approved by the Conduit System Manager, provided contractor is qualified and in good standing with the City.

III. USE OF CONDUIT SYSTEM

A. Installation Procedures.

i. Permit Requirements.

- a. Licensee shall be responsible for any 3rd party supervision charges relating directly to damages attributable to Licensee negligence.
- b. Licensee will meet all requirements under Title 5, Chapter 17 in order to receive a permit prior to beginning any construction in the Conduit System.
- c. Licensee agrees to comply with the “Call Nebraska One Call System” or any successor utility location system requirements prior to beginning construction.
- d. Construction Zone Identification. Licensee excavating or obstructing any portion of the ROW shall erect a temporary sign displaying either:
 - i.) The names of Licensee, any contractors and/or subcontractors involved in the project, and the City permit number authorizing said activity; or
 - ii.) The names of the Licensee and a local telephone number or toll free number manned during regular business hours by a person who is knowledgeable about the construction project. The sign shall be visible from any adjacent traffic lane and shall be maintained throughout the duration of the project.
- e. Cable Identification. Licensee will attach cable identification tags to Licensee-owned fiber cables within the LTID system.
 - i.) Cable identification tags will contain the name and contact information for the Licensee and be located in each System manhole and hand hole where Licensee-owned cable is present.

ii. Access

- a. Standard Access. Advance notice as specified below is required prior to Licensee accessing the Conduit System. After receiving notification of access, the City will notify all parties with product in the affected area of the date and time of proposed access. Licensee can opt to have a representative on site at the time of access to monitor all construction activities. The Licensee will be responsible for any cost to the City associated with this access.
 - i.) Manholes – 5 business days written notification to Conduit System Manager or designee is required prior to accessing manholes.
 - ii.) Hand holes – 5 business days written notification to Conduit System Manager or designee is required prior to accessing hand holes.
- b. Emergency Access. In the event of an emergency, Licensee shall endeavor to provide City with notice immediately prior to accessing or working around the Conduit System,

but in any case shall notify City within 4 hours of commencement of work or access into the Conduit System. On the first available business day City may notify all parties with product in the affected area.

- c. Supervision. Any customary charge incurred by the City for a City technician to supervise the installation, maintenance, or emergencies of the Licensee project will be the responsibility of the Licensee. In addition, Licensee shall be responsible for any 3rd party supervision charges relating directly to damages attributable to Licensee negligence. The City will provide Licensee with a City technician rate sheet and notify Licensee prior to any proposed rate change.
- d. Notification. City will notify Licensee of any emergency access to, or work performed around, the Conduit System on the first available business day after an Emergency Access by the City or any third party. Regarding Standard Access described in III (ii.) (a.) above, the City shall provide Licensee with not less than five (5) days prior notice of proposed access to the Conduit System by the City or any third party.

iii. Core bore location

- a. All manholes core bore locations or similar access will be subject to the approval of the Conduit System Manager. Such request must be made in writing, accompanied with a set of plans showing the location of all existing core bore locations in the manhole. The City shall take no more than fourteen (14) days to respond to core bore requests.
- b. All hand hole core bores or similar access locations will be subject to the approval of the Conduit System Manager. Such requested must be made in writing, accompanied with a set of plans showing the location of all existing core bore locations in the hand hole. The City shall take no more than fourteen (14) days to respond to core bore requests.
- c. Core bores will be accomplished using generally accepted industry practices. Requests will not be unreasonably delayed or denied by the City.

iv. Open Cut

- a. Removal of Spoil. Any/all spoil from excavation, trenching, boring or other construction activity shall be removed from the ROW the same day it is excavated. No spoil will be left on the street, sidewalk, or any other traveling surface overnight.
- b. Approval of Backfill. Cement-based flow-able fill or Class A aggregate base compacted to 95% standard modified proctor as described in the City of Lincoln Standard Specifications for Municipal Construction shall be used as backfill under a street or alley. At no time shall any excavation spoil be used as backfill. At no time shall sand be used as bedding or backfill material. Only cement-based flow-able fill or other equal material will be approved for use by the Conduit System Manager.
- c. Plating of open trench. Any trench in the roadway to be left unattended for any length of time shall be plated.

v. Pulling or Blowing Communication Cabling

- a. All fiber optic cable shall be installed using a powered pulling winch and hydraulic powered assist pulling wheels. The maximum pulling force to be applied to the fiber optic cable shall be 600 pounds. Sufficient pulling assists will be available and used to insure the maximum pulling force is not exceeded at any point along the pull. The cable

can also be installed via other methods as long as maximum pulling force on the cable does not exceed 600 pounds. All cables shall be lubricated with Polywater or approved equal. A pulling swivel with a break-away rated at 600 pounds shall be used at all times during the pulling operation.

- b. All splices and splice cases will be contained in manholes with locations of splice cases within the manholes to be approved by Conduit System Manager. Splices will not be approved in hand hole locations.
- c. Slack loops for Main Line cables will be fifty foot (50') maximum length of cable and may be installed in every Main Line manhole where space exists. Slack loops for Building Extension cable will be a maximum of twenty-five foot (25') in length and located in hand holes where space exists. The Conduit System Manager will review and approve all locations for Slack Loops. All slack loops and splice cases will be securely mounted to the manhole wall using generally accepted industry practices and will not interfere with conduit, innerduct, or manhole access. Slack loops may be prohibited in hand holes and manholes where physical space is not available or where the addition of slack may cause the hand hole or manhole to be unusable in the sole discretion of the System manager. No slack will be allowed on the manhole floor.
- d. Splice cases may be installed in any Main Line manhole. All mounting locations for splice cases and equipment racks will be approved by Conduit System Manager.
- e. All Manholes and hand holes will be kept clean and free of trash, unsecured slack loops, unsecured splice cases, and or other debris at all times.
- f. All conduits, innerducts, locate wire and fiber shall have a lubricant applied at each conduit ingress and egress location and during the pull operation. Lubricant shall be Polywater (type specific to be approved per project) or equal.

B. Restoration

i. Street

- a. Licensee shall comply with the terms and conditions of Title 14 and Lincoln Revised Ordinances prior to cutting any pavement.
- b. The replacement of any sidewalk, any driving surface, and the base of any roadway shall comply with City of Lincoln Standard Specifications for Municipal Construction, pursuant to engineering plans on file with the Public Works Department and will require additional removal to the nearest joint in all directions. This removal and all pavement restoration shall be the responsibility of the Licensee. The Licensee contractor shall be approved by the Conduit System Manager provided contractor is qualified and in good standing with the City, with all work done at the expense of the Licensee as set forth in Title 5, Title 14 and Lincoln Revised Ordinances.

ii. Alley.

- a. All restoration in alleys shall comply with City of Lincoln Standard Specifications for Municipal Construction, pursuant to engineering plans on file with the Public Works Department. Conduit System Manager shall determine proper size, scope, and material used to repair alleys on a case by case basis.

- iii. Contractor / Subcontractor Qualifications.** All Licensee contractors and subcontractors will meet the requirements set forth in by the Public Works Department.

iv. Traffic Control and Safety

- a. Licensee occupying any portion of ROW shall erect a barrier around the perimeter of any excavation and provide any and all traffic-control devices, signs, and lights appropriate to the level of complexity of the activity in order to protect, warn, and guide the public (vehicular and pedestrian) through the work zone. The manner and use of these devices shall be described within a traffic-control plan in accordance with the Manual on Uniform Traffic Control Devices and approved by the Traffic Engineer and submitted to the Conduit System Manager for review prior to commencing construction.
 - b. Licensee shall implement each traffic-control plan and agrees to be in compliance at all times with all applicable city, state, and federal requirements and maintain all devices in good repair. Licensees with open excavations awaiting final restoration shall maintain all devices until repair is complete or until the Public Works Department notifies the Licensee in writing that the City or the City's designated contractor is assuming responsibility for traffic control for the paving cut restoration.
 - c. Licensee shall designate a safety officer. The safety officer shall be responsible for safety-related issues affecting both the public and the Licensee's field employees and contractors for all job sites within the ROW.
- v. Safety.** Licensee agrees to perform all work in strict accordance with federal, state, local and all applicable private rules and laws regarding safety and environmental issues, including those set forth by OSHA and the EPA.
- vi. Construction Staging.** At no time shall the Licensee direct, nor shall a contractor or subcontractor working on behalf of the Licensee be directed to stage on any traveling surface within the Lincoln Technology Improvement District unless specifically approved in writing by the Conduit System Manager.
- vii. Timeline.** Licensee agrees to perform all construction and attempt with all reasonable effort to complete projects in a timely manner.

Exhibit B

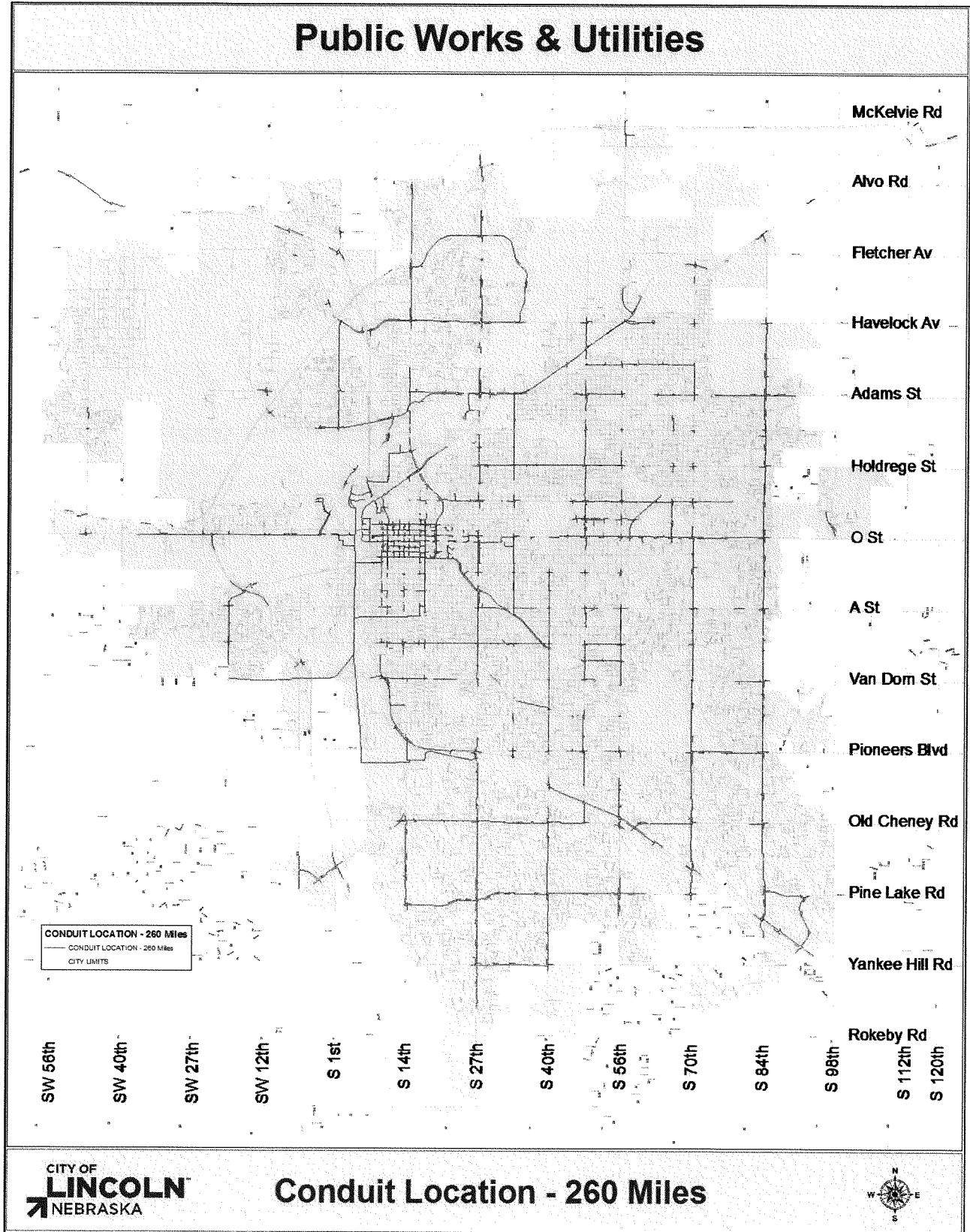


Exhibit C

Lincoln Technology Improvement District (“LTID”) **Defined**

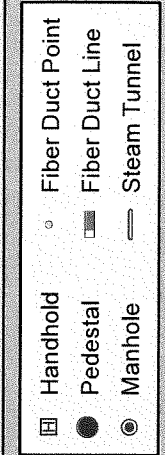
The LTID, as defined in the City of Lincoln is described as being all public Right of Ways located in the boundaries of the City.

The City of Lincoln reserves at its sole discretion, the right to expand the boundaries of the LTID in the future.

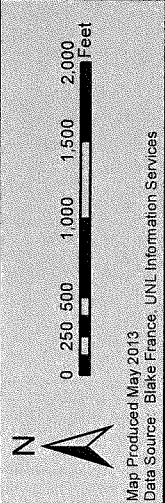
The City of Lincoln also reserves the right to designate any component of the conduit listed on the map as City only use. If and when any such component is designated as City only, the City shall work with providers to provide alternate routes.

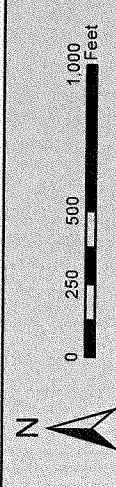
Exhibit D

Licensee's Existing Network Map and Detailed Inventory List
Defined



Information Services University of Nebraska - Lincoln City Campus





Map Produced May 2013
 Data Source: Blake France, UNL Information Services

Information Services University of Nebraska - Lincoln East Campus

- | | | | |
|--|----------|--|------------------|
| | Handhold | | Fiber Duct Point |
| | Pedestal | | Fiber Duct Line |
| | Manhole | | Steam Tunnel |